92-51 (2)

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No. 813

In The

Supreme Court of the United States

October Term, 1992

WILLIAM ANDREW ORTMAN,

Petitioner,

v.

ORTMAN BROS., CERTAIN LAWYERS, JUDGES AND COURTS OF MICHIGAN

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS

AND APPENDICES

CONDIT, MCGARRY AND SCHLOFF, P.C.
By: RICHARD P. CONDIT (P12101)
Counsel of Record
6905 Telegraph Road, Suite 215
Bloomfield Hills, Michigan 48301
(313) 645-5205

Attorneys for John R. Ortman, James F. Ortman, The Ortman Company and Ort-Fam, Inc.

Interstate Brief & Record Company, a division of North American Graphics, Inc.
1629 West Lafayette Boulevard, Detroit, MI 48216 (313) 962-6230

COUNTER STATEMENT OF THE QUESTION PRESENTED

I.

WHETHER THE SELF-INFLICTED LEGAL TRIALS AND TRIBULATIONS ENCOUNTERED IN VARIOUS MICHIGAN COURTS BY PETITIONER AND ATTORNEY, WILLIAM ANDREW ORTMAN, AS DESCRIBED IN HIS PETITION WARRANT THE EXERCISE OF JUDICIAL DISCRETION BY THE UNITED STATES SUPREME COURT BY WAY OF WRIT OF CERTIORARI?

PARTIES TO THE PROCEEDINGS

Contrary to Petitioner's representations, the only parties to the identified proceedings in the Michigan Courts are Petitioner, William A. Ortman, his brothers, John R. Ortman and James F. Ortman, the family partnership known as The Ortman Company and the family corporation known as Ort-Fam, Inc.

The other "parties" named and unnamed on page ii of the Petition are not litigants but rather judges and lawyers whose misfortune it has been to adjudicate proceedings and/or represent clients in lawsuits involving Petitioner, William A. Ortman.[1]

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[1] **It should be noted that this Brief does not address those separate and distinct proceedings involving Petitioner, William A. Ortman, in the Kalamazoo County Circuit Court or any appeals therefrom. This specific subject matter will be addressed in a Brief to be filed by the law firm of Miller, Canfield, Paddock and Stone.**

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OPINIONS BELOW

Petitioner's only reference and identification of Court opinions is to the June 25, 1991 Michigan Court of Appeals Opinion affirming in Case No. 118573 the April 19, 1989 Lapeer County Circuit Court Order of Dismissal and affirming in Case No. 131217 the June 27, 1990 Oakland County Circuit Court Order Taxing Costs Against William A. Ortman in the amount of $3,586.70. As noted by Petitioner, this Court of Appeals Opinion was subsequently addressed by a January 31, 1992 Michigan Supreme Court Order which granted William A. Ortman's Motion for Immediate Consideration and then denied his Delayed Application for Leave to Appeal.

The other lower court orders from the Michigan Court system contained in Petitioner's Appendix have not been identified pursuant to Supreme Court Rule 14.

It should also be noted that Petitioner's Application and Supplemental Application for Extension of Time addressed a prospective Petition for Writ of Certiorari to the *Supreme Court* of Michigan. His filed Petition for Writ of Certiorari is addressed to the Michigan Court of Appeals, the intermediate appellate court in Michigan.

JURISDICTIONAL STATEMENT

Petitioner's "Jurisdictional Statement" does not comply with Supreme Court Rule 14E. It identifies no "grounds on which the jurisdiction of this Court is invoked." It fails to identify the specific lower court judgment sought to be reviewed. Lastly, it identifies no statutory provision which would confer jurisdiction on the United States Supreme Court.

Simply put, Petitioner has not and cannot advance any "special and important reasons" as meaningful considerations for prospective intervention by the United States Supreme Court under the criteria established in Supreme Court Rule 10. There are no federal questions involved. The June 25, 1991 Court of Appeals Opinion merely concerned itself with routine questions of civil jurisdiction and costs. For Petitioner to suggest (Petition, page xiv) that this pronouncement "could cause the collapse of the entire nation" does not inspire one's confidence in the credibility of his advocacy.

CONSTITUTIONAL PROVISIONS

Contrary to Petitioner's representations, there are absolutely no constitutional provisions, treaties, statutes, ordinances or regulations involved in the lower court litigation which would form the basis for a Writ of Certiorari.

RAISING OF FEDERAL QUESTIONS

Respondents concede that Petitioner, William A. Ortman, has an obsession with "federal questions" and is prone to vigorously invoke their presence, whether imagined or otherwise.

In its unanimous opinion of June 25, 1991, the Michigan Court of Appeals, after censuring William A. Ortman for committing an affront to the Court, "an affront knowingly caused by an officer of the Court" addressed Petitioner's constitutional concerns as follows:

> "Appellant's claim of violations of due process and equal protections of the laws are meritless. Appellant had the option of reactivating his Oakland Circuit Court action but chose to "judge shop" instead. Having suffered the sanction of dismissal as a result of his effrontery, he cannot be heard to now claim a deprivation of his rights. We find no abuse of discretion and affirm the lower court." (Respondents' Appendix, p. C-5)

COUNTER STATEMENT OF FACTS

Petitioner, William A. Ortman of Farmington Hills, Michigan is a member of the State Bar of Michigan. He has two brothers, John R. Ortman, who lives in Lapeer, Michigan and James F. Ortman, who lives in Frankenmuth, Michigan. Each brother has a one-third (1/3) interest in Ort-Fam, Inc., a Michigan corporation and The Ortman Company, a Michigan co-partnership. Neither John R. Ortman nor James F. Ortman are attorneys. The Ortman Company, Ort-Fam, Inc., and the Ortman brothers, individually and with their respective wives, own certain parcels of real estate. Some of the real estate, is located in Lapeer County, Michigan, but other

real estate is located in Detroit and Kalamazoo, Michigan, and Regan County, Texas.

On December 5, 1988 Petitioner, William A. Ortman commenced proceedings in the Oakland County, Michigan Circuit Court, (Case No. 88-361134 CR) against The Ortman Company, Ort-Fam, Inc., and John R. Ortman and James F. Ortman. The Trial Judge refused to disqualify himself and was sustained by the Chief Judge. Unhappy with the way matters were proceeding against him, William A. Ortman then voluntarily dismissed the Oakland County proceedings and travelled to Lapeer County, Michigan where on February 16, 1989 he refiled the substantially identical Complaint against the same Defendants, (carefully crossing out "Pontiac, Michigan" and substituting "Lapeer" but neglecting to revise paragraph 111 of his Complaint which informed the Lapeer County Circuit Court that "the subject of this action is situated in Oakland County, Michigan"). (Lapeer County Case No. 89-013967-CR(B))

Upon commencement of the Lapeer County proceedings, William A. Ortman, without notice to Defendants, made two chambers visits to the Honorable Norman A. Baguley for the purposes of obtaining ex parte relief. On February 16, 1989, he obtained an Order entitled Appointment of Receiver Pendente Lite and on February 21, 1989, he secured a Restraining Order and Order to Show Cause. Although Defendants were not privy to the circumstances surrounding the entry of these Orders, there was a dispute as to whether Judge Baguley was "fully advised in the premises." In a subsequent Brief, William A. Ortman made the following representation to the Michigan Court of Appeals:

> It was disclosed to the circuit judge at the time of filing that the suit had been previously filed and voluntarily dismissed in Oakland County (in

> compliance with MCR 2.504) for the reason that the judge there had refused to follow the laws as made and provided. Assurances were pronounced that such transgressions did not happen in Lapeer County, although it was pretty well known that such happenings did occur "down below" in Oakland County. (Page 1)

However, when inquiry was made of the Circuit Judge as to the accuracy of this paragraph, his recollection was significantly different. (See December 8, 1989 correspondence – Appendix, pp. A-1 - A-3)

Upon receipt of the Ex Parte Orders, Defendants filed responsive Motions for:

1. Change of Venue Improperly Made.
2. Termination of Receiver Pendente Lite.
3. Costs and Stay.
4. Termination of Temporary Restraining Order.

In the interim, Evald H. Johnson, the Ex Parte Receiver, (a CPA nominated by William A. Ortman) vigorously embarked upon his "duties" and, without notice, withdrew approximately $30,000 from an Ort-Fam, Inc., bank account in Frankenmuth, Michigan, resulting in numerous checks being returned for insufficient funds.

On March 6, 1989, the parties appeared at a show cause hearing and upon being apprised of the situation, Judge Baguley entered an Order Staying Proceedings, Maintaining Status Quo and Scheduling Hearing Date. This Order halted any further activities of the Receiver, continued the status quo with respect to the parties' business affairs and scheduled a hearing date.

On April 7, 1989, an Evidentiary Hearing was conducted before Judge Baguley with testimony having been presented and exhibits received.

Ralph J. Kliber, a distinguished CPA and attorney, testified that William A. Ortman and his brothers, John and James, are the three sons of Frank and Marcella Ortman, now deceased. Mr. Kliber described his personal, professional and fiduciary relationship with the Ortman family since the mid-1940's. Mr. Kliber then described The Ortman Company, a Michigan co-partnership and Ort-Fam, Inc., a Michigan corporation and the sons' one-third (1/3) ownership in each entity. The corporation did not own any real estate or do business in Lapeer County. He was the resident agent at his Detroit office. Historically, Mr. Kliber prepared annual financial statements and tax returns. In his judgment, the affairs of the corporation were being conducted honestly, openly and above board and there was absolutely no necessity for the appointment of a Receiver.

Ralph J. Kliber then described the Michigan Partnership known as The Ortman Company. It owns real estate located in Lapeer County, Michigan, Regan County, Texas and Kalamazoo, Michigan, the latter parcel being the subject of certain litigation in Kalamazoo County Michigan Circuit Court. Therein, the Honorable William G. Schma entered a December 2, 1988 Order requiring The Ortman Company to convey the Kalamazoo property. Thus, jurisdiction of that asset was in the Kalamazoo County, Michigan Circuit Court. Mr. Kliber also prepared annual financial statements and tax returns for the Partnership and in his professional opinion, there was no necessity for receivership with respect to The Ortman Company.

With respect to the previous Oakland County litigation, a certified copy of William A. Ortman's Complaint in case number 88-361134 was received as Exhibit D and a certified copy of the docket entries was received as Exhibit E. A comparison of the former Oakland County Complaint with the Lapeer County Complaint disclosed

that they were substantially identical and that the same parties were involved and the same relief requested. The Court was then apprised of the circumstances surrounding William A. Ortman's Voluntary Dismissal of the prior Oakland County Proceedings. Specifically, the Court was advised as to William A. Ortman's attempt to default not only his brothers but also the family corporation and partnership; his unsuccessful effort to disqualify Circuit Court Judge Steven N. Andrews and the matters still pending before Judge Andrews in March of 1989 *after* commencement of the Lapeer litigation. Judge Baguley then observed:

> THE COURT: Let's look at it this way. I just have a real problem with you, Mr. Ortman, because if you started a case in Oakland County and then let's say you properly dismissed as to all defendants. On your summons that you filed in this Court it says there is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this Court nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge. How could you file that? (tr. pg. 40-41) How can you make that statement when you did file a suit in Oakland County with the same parties, same transactions and dismissed it? (tr. pg. 41)

No satisfactory explanation was provided by William A. Ortman. The Court then observed:

> And my position is that the whole idea of that requirement is to stop forum shopping and judge shopping and it is pretty obvious what happened when you got turned down twice on disqualification in Oakland County, you couldn't take it so you decided to try it someplace else, and I am not going to let it happen. (tr. pg. 45)

The Court then ordered dismissal of the Lapeer County litigation. The Court's written Order of Dismissal was entered on April 19, 1989. Subsequently, the Court entered its Order Denying Motion for Rehearing and Reconsideration on June 5, 1989. William A. Ortman then filed an appeal with the Michigan Court of Appeals (No. 118573).

On April 11, 1989 (subsequent to the Lapeer Court's oral Order of Dismissal but prior to entry of the formal Order) The Ortman Company, John R. Ortman and James F. Ortman and their respective wives, filed a lawsuit in Oakland County Circuit Court against William A. Ortman and Lavina M. Ortman. Plaintiff's Complaint contains three counts seeking court-ordered sale and/or partition of real estate; dissolution of a partnership; allowance of partnership accountings; and compensation for tortious conduct committed by Defendant, William A. Ortman. The family corporation, Ort-Fam, Inc., is not a party in Oakland County as it was in Lapeer County. Sheila D. Ortman, Virginia A. Ortman and Lavina M. Ortman were not parties in Lapeer County but are parties in the Oakland County action.

As noted above, James F. and Virginia A. Ortman reside in Saginaw County, John R. and Sheila D. Ortman reside in Lapeer County and Defendants William A. and Lavina M. Ortman reside in Oakland County. The Ortman Company, a Michigan co-partnership, is not currently registered since Defendant, William A. Ortman, refused to sign the necessary Certificate of Co-Partnership.

Some of the real estate is located in Lapeer County, Michigan, but other real estate is located in Kalamazoo, Michigan and Regan County, Texas.

When William A. Ortman filed the *original* Oakland County Circuit Court lawsuit (File No. 88-361134 CR) in

December of 1988 he pleaded, under oath, that The Ortman Company partnership was established in Oakland County, Michigan. Also, on February 1, 1989, William A. Ortman advised the Honorable Steven N. Andrews, Oakland County Circuit Judge, that the Ortman Company is a Michigan partnership established in Oakland County.

Subsequently, William A. Ortman and Lavina M. Ortman filed their Motion for Summary Disposition Under MCR 2.116 or in the Alternative, for Change of Venue Under MCR 2.223 including costs and fees; for sanctions. Plaintiffs filed an Answer to Motion and Affidavit of James F. Ortman. Briefs were filed and after oral argument on May 30, 1989, the Honorable Fred M. Mester entered an Order Denying Motion for Summary Disposition, or in the Alternative, for Change of Venue dated June 12, 1989. William A. Ortman then filed a delayed Application for Leave to Appeal to the Michigan Court of Appeals.

On December 6, 1989, the Court of Appeals entered its Order dismissing William A. Ortman's Appeal and taxing actual costs, including a reasonable attorney's fee, in favor of Plaintiffs and against Defendants. (See attached Order – Appendix, p. B-1) Upon the filing of a Taxed Bill of Costs and after review of Defendants' Objections, the Chief Clerk taxed costs of Three Thousand Five Hundred Eighty-Six and 70/100ths ($3,586.70) Dollars in accordance with MCR 7.219.

Subsequently, Defendants filed their Motion for Rehearing which was denied by the Court of Appeals by Order dated January 19, 1990. Thereafter, Defendants filed their Application for Leave to Appeal to the Michigan Supreme Court which was denied by Order entered March 30, 1990.

When William A. Ortman and Lavina M. Ortman continued their refusal to pay the costs and attorney fees, a Motion for Contempt was filed in the Oakland County Circuit Court and a hearing was held before the Honorable Fred M. Mester, Circuit Judge, on June 20, 1990.

On June 27, 1990 the Order for Payment of Costs and Attorney Fees, to Show Cause and Setting Appeal Bond was entered by the Court and William A. Ortman filed a Claim of Appeal to the Michigan Court of Appeals (No. 131217).

On July 25, 1991 the Michigan Court of Appeals, in a unanimous consolidated opinion affirmed the lower court orders of the Oakland County and Lapeer County Circuit judges. (See attached Order – Appendix, pp. C-1-C-6) Defendants then filed their Delayed Application for Leave to Appeal with the Michigan Supreme Court. On January 31, 1992, the Michigan Supreme Court denied the appeal. (See attached Order – Appendix, p. D-1)

Since the Michigan Court of Appeals had lifted any stay of proceedings except as to the attorney fee award and had authorized the Oakland Circuit Court to "move forward in its discretion" the trial judge proceeded to adjudicate the disputes between William A. Ortman and his brothers and The Ortman Company with respect to real estate and the partnership.

Previous to any stay, the trial court on July 27, 1990, entered its Order for Sale of Real Estate, Dissolution of Partnership and for Accountings. Subsequently, the court on January 9, 1991, entered its Order authorizing sale of Texas Property. On February 27, 1991, the Court entered its Order authorizing sale of Ranchwood property. The cause was scheduled for trial and after the taking of proofs (William A. Ortman did not appear) the Court entered its April 29, 1992, Judgment on

Accounting and retained continued jurisdiction for sale of the remaining property and winding up of the partnership affairs. No appeals have been taken from any of these Orders or Judgment.[1]

Meanwhile, post-appellate proceedings have occurred in the Lapeer County Michigan Circuit Court.

When the Lapeer trial judge entered the Order of Dismissal in May of 1989, it provided ". . . that the matter of costs and attorney fees to be awarded to Defendants for having to defend this cause shall be deferred until further Order of the Court." On motion of Defendants and following a hearing, the Court on January 13, 1992 entered its Order for Return of Funds Seized and For Costs and Attorney Fees. Therein the Court ordered William A. Ortman to pay reasonable costs and attorney fees in the amount of Ten Thousand Three Hundred Seventy-Four and 58/100ths ($ 10.374.58) Dollars pursuant to MCR 2.114 and MCR 2.113. No appeal was taken from this Order.

William A. Ortman belatedly filed a Motion for Disqualification of the Trial Judge which was denied by Order entered May 12, 1992. No request to have Plaintiff's motion reassigned to another judge for a decision de novo was made by William A. Ortman pursuant to MCR 2.2003(C), nor was an appeal taken.

When Plaintiff, William A. Ortman, and "Receiver" Evald H. Johnson refused to comply with the Court's Orders for payment of costs and attorney fees and for return of funds previously seized, the trial judge entered Orders to Show Cause and following a hearing

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[1] **William A. Ortman has filed claims of appeals with respect to the trial court's finding of contempt against him as well as the trial court's Order authorizing distribution of Ranchwood sale proceeds, including payment of fees. However, these appeals have not been perfected and no Briefs have been filed.**

entered its Order Re: Evald H. Johnson and Order Re: William A. Ortman. Said Orders gave Respondents until May 26, 1992 to honor the Court's previous Orders or be found in contempt of Court.

Respondent, Evald H. Johnson, submitted an accounting and turned over certain funds to the Court but unlawfully withheld Two Thousand Five Hundred Three ($2,503.00) Dollars. Respondent, William A. Ortman, continued to totally disregard the Court's Orders. Defendants' Motion for Punishment of Evald H. Johnson and William A. Ortman are now pending a hearing before Lapeer County Circuit Judge.[2]

Having failed to achieve a favorable civil adjudication in any state court in Michigan, William A. Ortman then turned to the criminal law for relief. However, in response to his Request for Grand Jury, the Oakland County Michigan Circuit Court bench, en banc, entered its August 9, 1991 Order Denying Petition. (See attached Order – Appendix, p. E-1)

William A. Ortman then invoked the Federal Court system and filed an August 26, 1991 Complaint against 55 defendants, including four counties, seven courts, two cities, ten lawyers, five law firms, seven Supreme Court Justices, seven Court of Appeals' Judges, four Circuit Judges, two Probate Judges, two District Court Judges, and related clerks and individuals. In response to Motions filed by the Defendants, the United States District Judge on April 13, 1992 entered an Order Granting Summary Judgment. (See attached Order –

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[2] **At a May 11, 1992 hearing in the Lapeer County Circuit Court, Petitioner, William A. Ortman, was searched by court officers and a loaded revolver was found in his briefcase. (Inexplicably, William A. Ortman possesses an unrestricted license to carry a concealed weapon). The trial judge admonished Mr. Ortman not to bring the weapon into court again.**

Appendix, pp. F-1-F-2) Proceedings are now pending for the Court's determination of taxable attorney fees and costs pursuant to Rule 11 FRCP.

CONCLUSION

It is apparent that William A. Ortman's trials and tribulations encountered in various Michigan Courts are self-inflicted and do not form the basis for the exercise of judicial discretion by the United States Supreme Court to issue a Writ of Certiorari.

In fact, it is Petitioner's brothers, James F. Ortman and John R. Ortman, joined by a legion of Michigan judges and attorneys who are in fact aggrieved and long suffering. As noted by the Michigan Court of Appeals:

> Appellant's brief in the instant appeal contains the same type of groundless, unfounded and scandalous allegations his earlier briefs contained and constitutes an utter and complete disregard of the requirements that an issue be fairly presented to this Court. His assertion that Judge Mester was without authority to tax costs is utterly preposterous as the imposition of those costs was done in direct response to an order of this Court. Appellant must be put on notice that his lack of disregard for the court rules has consequences, chief of which is his being required to pay the costs for parties subjected to defending themselves against his meritless and vexatious proceedings. We affirm the taxation of costs. (Respondents' Appendix, p. C-5)

This frivolous Petition for Writ of Certiorari by William A. Ortman should be summarily denied and double costs should be assessed against Petitioner in

favor of Respondents pursuant to Supreme Court Rules 42 and 43.

Respectfully submitted,

CONDIT, McGARRY and SCHLOFF, P.C.

By: /s/ RICHARD P. CONDIT (P12101)
Counsel of Record

Attorneys for John R. Ortman, James F. Ortman, The Ortman Company and Ort-Fam, Inc.
6905 Telegraph Road, Suite 215
Bloomfield Hills, MI 48310
(313) 645-5205

Dated: July 24, 1992

APPENDICES TO BRIEF IN OPPOSITION

• • •

APPENDIX A

LETTER FROM HON. NORMAN A. BAGULEY

THE FORTIETH JUDICIAL CIRCUIT OF MICHIGAN
NORMAN A. BAGULEY,
CIRCUIT JUDGE

LAPEER COUNTY COMPLEX BUILDING
255 CLAY ST. • LAPEER, MICHIGAN 48446 (313) 667-0320

Mr. Richard P. Condit
Attorney at Law
Suite 215
6905 Telegraph Road
Birmingham, MI 48010

December 8, 1989

Re: Ortman v The Ortman Company, et al
Case No. 89-013967-CR(B)

Dear Mr. Condit:

This is in reply to your letter of December 6, 1989, regarding the above matter and concerning Mr. William A. Ortman's appearance in my chambers on February 21, 1989.

I believe that it was on February 16, 1989, (since that was the date the case was filed and the Appointment of Receiver Pendente Lite was signed by me) that Mr. Ortman first appeared. There was discussion concerning the case but I do not recall what all was said. Then on February 21, 1989, I was presented with a proposed Restraining Order and Order to Show Cause. I believe that on one of those occasions there was mention of some action having been taken previously

in Oakland County Circuit Court but I am not all all certain.

I have no doubt that I mentioned that we in Lapeer County examine TRO's much more closely than Oakland County does. This was based on the fact that I have rejected many proposed TRO's offered by Oakland County attorneys for failure to comply with MCR 3.310(B) requirements.

I am fairly certain that I was not aware of what had actually transpired in any prior Oakland County Circuit Court action. I remember being shocked at the list of docket entries presented to me in court at one of the hearings. That was the first occasion on which I was aware of the disqualification motions filed against the Oakland judges and the related matters.

I can state with confidence that the issue of proper venue did not occur to me until the defendants raised it in their pleadings. Nor was I otherwise aware that the Oakland County case had been "voluntarily dismissed" without the consent of both parties. I can state unequivocally that I was not advised that the dismissal occurred "for the reason that the judge there had refused to follow the laws . . ." Such a statement would have immediately raised a red flag in my mind about a venue issue. As I stated above, any reference to procedures in Oakland County being different from ours was directed to TRO's and other procedural practices, certainly not toward their quality of decision making!

It is my practice not to base any decisions or actions on anything not a matter of record. Since I do not favor making a record or memorandum of discussions with attorneys supporting the issuance of TRO's as required by MCR 3.310 (B)(1)(c), I tell them not to talk about it. I am certain I did so with Mr. Ortman.

It would be difficult for me to execute an affidavit due to the uncertainties I have mentioned. However, I firmly believe that the Court of Appeals will only consider matters of record. That has been my experience with that court.

If I can be of further assistance, please let me know.

Very truly yours,

Norman A. Baguley
Circuit Judge

NAB:ams

cc: Mr. William A. Ortman
Attorney at Law

APPENDIX B

ORDER

(State of Michigan — Court of Appeals)

(Dated December 6, 1989)

(JOHN ORTMAN v WILLIAM ORTMAN — Docket No. 118574)

BEFORE: Myron Wahls, P.J., and
Sullivan and Brennan, JJ.

The Court orders, pursuant to MCR 7.216(A)(10), that the delayed application for leave to appeal is DISMISSED. Appellants submitted a brief not in conformance with MCR 7.212(C)(5), and additionally failed to provide this Court with a transcript of the circuit court's bench opinion as required by MCR 7.205(B)(2). See also MCR 7.212(H).

Pursuant to MCR 7.216(C)(1)(b), plaintiffs may tax their actual costs, including a reasonable attorney's fee, for their expenses in opposing this application. Damages shall not exceed actual damages and expenses incurred by appellees, including reasonable attorney fees. Any dispute over the proper amount of costs to be taxed pursuant to this order shall be resolved by the trial court. MCR 7.216(C)(2).

This Court retains no further jurisdiction.

/s/ Myron H. Wahls,
Presiding Judge

Dated: December 6, 1989

APPENDIX C

OPINION

(State of Michigan — Court of Appeals)

(Entered June 25, 1991)

(WILLIAM A. ORTMAN, Plaintiff-Appellant, v THE ORTMAN COMPANY, ORT-FAM, INC., JOHN R. ORTMAN and JAMES F. ORTMAN, Defendants-Appellees — Case No. 118573; JOHN R. ORTMAN, SHEILA D. ORTMAN, JAMES F. ORTMAN, VIRGINIA A. ORTMAN and THE ORTMAN COMPANY, Plaintiffs-Appellees, v WILLIAM A. ORTMAN and LAVINA M. ORTMAN, Defendants-Appellants — Case No. 131217)

BEFORE: Danhof, C.J., and
Holbrook, Jr. and Sullivan, JJ.

PER CURIAM.

These two consolidated cases represent more or less the same underlying controversy, the partition of property and the dissolution of two family business entities. In No. 118573, appellant William Ortman appeals from an order of the Lapeer Circuit Court dismissing his action for noncompliance with court rules and the apparent pendency of action in Oakland Circuit Court. In No. 131217, appellant Ortman appeals from an order of the Oakland Circuit Court taxing costs in the amount of $3,586.70. We affirm the orders of the respective courts.

The litigation concerns properties owned by appellant and his two brothers. The properties are managed by a partnership, Ortman Company, and a corporation, Ort-Fam, Inc., both of which entities are in the hands of the three Ortman brothers. Appellant originally filed suit against his brothers and the two business entities in Oakland Circuit Court, alleging in 160 consecutively

numbered paragraphs that his brothers were fraudulently and wastefully handling the various assets involved to his detriment. A temporary restraining order was issued and appellant order [*sic*] to post a $265,000 bond. At a January 4, 1989, hearing, Oakland Circuit Judge Steven Andrews denied appellant's motions for default judgment, appointment of a receiver and appointment of a partition commissioner. Appellant moved to disqualify Judge Andrews and upon his refusal to do so, and the chief judge's concurrence, appellant voluntarily dismissed the action on February 10, 1989.

Five days later, appellant filed an identical action in Lapeer Circuit Court. "Lapeer County" was substituted for "Oakland County" throughout the complaint except in paragraph 111. On the day of filing, Lapeer Circuit Judge Norman Baguley, granted appellant ex parte the appointment of a receiver for the business entities and a restraining order against his brothers and the business entities.

At a show cause hearing, the defendants filed an appearance and represented to Judge Baguley that there was an identical action pending in Oakland Circuit Court since their motion to set aside default judgments was still awaiting a decision. The proceedings were stayed until April 7, 1989, at which time Judge Baguley, angered over appellant's "judge shopping", dismissed the case, telling appellant he would have to reactivate his Oakland Circuit case.

In the meantime, on April 11, 1989, appellant's brothers, their wives, and Ortman Company filed suit against appellant in Oakland Circuit Court, seeking partition. Oakland Circuit Judge Fred Mester denied appellant's motion for summary disposition or change of venue. Appellant filed a delayed application for leave to

appeal the dismissal to this Court (No. 118574), asserting Oakland Circuit Court could not exercise jurisdiction because of the pending Lapeer County action. This Court denied appellant's application for leave to appeal and sua sponte awarded the appellees actual costs, including reasonable attorney fees, pursuant to MCR 7.216(C)(1)(b). The circuit court taxed costs in the amount of $3,586.70 and appellant sought leave to appeal to the Supreme Court, which was denied. Appellant now appeals the taxing of costs to this Court.

No. 118573

Restating appellant's two issues as one, appellant asks whether the trial judge properly dismissed, without prejudice, his Lapeer Circuit Court action in view of the previous Oakland County litigation and the then state of the pleadings, the litigants and the subject matter involved.

We review the dismissal of an action for failure to comply with the court rules for an abuse of the trial court's discretion. *Houston* v *Southwest Detroit Hospital*, 166 Mich App 623, 628-629; 420 NW2d 835 (1987), lv den 431 Mich 852 (1988).

MCR 2.113(C)(2)(a) requires a disclosure by a plaintiff as follows:

> (2) The caption of a complaint must also contain either (a) or (b) as a statement of the attorney for the plaintiff, or of a plaintiff appearing without an attorney.
>
> (a) There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this court, nor has any such action been assigned to a judge, nor do I know of any

> other civil action, not between these parties, arising out of the same transaction or occurrence as alleged in this complaint that is either pending or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a judge in this court.

Contrary to appellant's assertion that he told Judge Baguley about the Oakland County action when he requested the appointment of a receiver and restraining order, the record is clear that Judge Baguley was first meaningfully apprised of the other case when the defendants informed him about it at the first hearing.

At the second hearing, Judge Baguley focused on appellant's violation of MCR 2.113(C)(2) and what he termed an attempt at "judge shopping" and appellant's noncompliance with MCR 2.114, the so-called signature rule. Judge Baguley thereupon dismissed the action in what appellant now asserts was an abuse of discretion.

While MCR 2.114(E) does not specify dismissal of an action as a sanction for noncompliance with the signature requirement, neither does it disallow dismissal as a sanction. MCR 2.504(B), the involuntary dismissal rule, acknowledges the power of the trial court to enter a dismissal both in situations in which it is specifically authorized by another rule and in situations, as with MCR 2.114, in which the rule does not specify the sanction.

The facts of the instant case clearly warranted dismissal as a sanction. Appellant is an attorney, representing himself, and Judge Baguley could well consider him to be aware of the court rules and of the judiciary's intense dislike for judge and/or forum shopping. Seeking ex parte relief from the Lapeer Circuit Court without informing Judge Baguley of the Oakland Circuit action, going so far as to submit a pleading stating there was

no other action pending, was an affront to the court, an affront knowingly caused by an officer of the court.

Appellant's claim of violations of due process and equal protections of the laws are meritless. Appellant had the option of reactivating his Oakland Circuit Court action but chose to "judge shop" instead. Having suffered the sanction of dismissal as a result of his effrontery, he cannot be heard to now claim a deprivation of his rights. We find no abuse of discretion and affirm the lower court.

No. 131217

Appellant also challenges this Court's award of actual costs, including reasonable attorney fees, pursuant to MCR 7.216(C)(1)(b) and the amount of those costs as taxed by the trial court.

Under MCR 7.216, this Court can sua sponte assess actual or punitive damages when it determines that an appeal or any of the proceedings in an appeal were vexatious because there was a lack of any reasonable basis for the belief the issue or issues were meritorious. Appellant's underlying appeal (No. 118574) was dismissed by this Court for failure to comply with the court rules and was found to be vexatious.

Appellant's brief in the instant appeal contains the same type of groundless, unfounded and scandalous allegations his earlier briefs contained and constitutes an utter and complete disregard of the requirements that an issue be fairly presented to this Court. His assertion that Judge Mester was without authority to tax costs is utterly preposterous as the imposition of those costs was done in direct response to an order of this Court. Appellant must be put on notice that his lack of disregard for the court rules has consequences, chief of which is his being required to pay the costs for

parties subjected to defending themselves against his meritless and vexatious proceedings. We affirm the taxation of costs.

Affirmed.

/s/ Robert J. Danhof
/s/ Donald E. Holbrook, Jr.
/s/Joseph B. Sullivan

Dated: June 25, 1991

APPENDIX D

ORDER

(State of Michigan — Supreme Court)

(Entered January 31, 1992)

(WILLIAM A. ORTMAN, Plaintiff-Appellant, v THE ORTMAN COMPANY, ORT-FAM, INC., JOHN R. ORTMAN and JAMES E. ORTMAN, Defendants-Appellees; JOHN R. ORTMAN, SHEILA D. ORTMAN, JAMES E. ORTMAN, VIRGINIA A. ORTMAN and THE ORTMAN COMPANY, Plaintiffs-Appellees, v WILLIAM A. ORTMAN and LAVINA M. ORTMAN, Defendants-Appellants — SC: 92776, 92777; COA: 118573, 131217; LC: 89-13967, 89-367786)

On order of the Court, the motion for immediate consideration and the delayed application for leave to appeal are considered. The motion for immediate consideration is GRANTED. The delayed application for leave to appeal is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

Certification signed by: Corbin R. Davis,
Clerk

Dated: January 31, 1992

APPENDIX E

ORDER DENYING PETITION

(State of Michigan – Circuit Court – County of Oakland)

(IN RE PETITION OF WILLIAM A. ORTMAN REQUEST FOR GRAND JURY)

AT A SESSION of the Court, held in the Courthouse in the City of Pontiac, on August 9, 1991.

PRESENT THE HONORABLES:

Steven N. Andrews, Chief Judge
Robert L. Templin, Richard D. Kuhn, John N. O'Brien, Francis X. O'Brien, Gene Schnelz, Robert C. Anderson, David F. Breck, Jessica R. Cooper, Rudy J. Nichols, JJ.

This matter having come before the Court on Re Petition of William A. Ortman requesting that a Grand Jury be convened and the Court having reviewed the petition in accordance with MCL 767.3 and Local Court Rule 6.107, and the Court being otherwise fully advised in the premises;

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that the petition of William A. Ortman be, and the same hereby is, denied.

/s/ Hon. Steven N. Andrews,
Chief Judge

APPENDIX F

ORDER GRANTING SUMMARY JUDGMENT

(United States District Court —
Eastern District of Michigan — Southern Division)

(WILLIAM A. ORTMAN and LAVINA M. ORTMAN, and the ESTATE OF MARCELLA G. ORTMAN, DECEASED, Plaintiffs, vs. STATE OF MICHIGAN, COUNTY OF LAPEER, COUNTY OF OAKLAND, COUNTY OF KALAMAZOO, MICHIGAN SUPREME COURT, COURT OF APPEALS, 40TH CIRCUIT, 6TH CIRCUIT COURT, 9TH CIRCUIT COURT, OAKLAND PROBATE COURT, 9-1 DISTRICT COURT, CITY OF KALAMAZOO, CITY OF FARMINGTON HILLS, RALPH J. KLIBER, GERALD SIMON, RICHARD CONDIT, ALEXANDER MCGARRY, JAMES L. WHYARD, ALAN HARNISCH, SEYBURN, KAHN, GINN, BESS, HOWARD & HARNISCH, SEYBURN, KAHN, GINN, BESS, HOWARD & HARNISCH, P.C.; FISCHER, FRANKLIN, FORD, SIMON & HOGG, CONDIT, MCGARRY & SCHLOFF, P.C. LAURENCELLE & ASSOCIATES, INC.; MICHAEL F. CAVAGNAGH, CHIEF JUSTICE; CHARLES L. LEVIN; JAMES H. BRICKLEY; PATRICIA J. BOYLE; DOROTHY COMSTOCK RILEY, ROBERT GRIFFIN; CONRAD MALLET, JR.; ROBERT J. DANHOFF; DONALD E. HOLBROOK, JR.; JOSEPH B. SULLIVAN; MARK J. CAVANAGH; NORBERT G. JAWORSKI; RICHARD M. MAHER; DAVID H. SAWYER; THOMAS J. BRENNAN; FRED M. MESTER; STEVEN ANDREWS; HUGH DEAN, JR.; NORMAN BAGULEY; MARTIN CLEMENTS; WILLIAM SCHMA; DONALD E. JAMES; MILLER, CANFIELD, PADDOCK & STONE; JAMES E. SPURR; CRAIG R. BUSH; MICHAEL L. CHOJNOWSKI; HARNISCH & ASSOCIATES, P.C.; DONALD E. LITKE AND LINDA B. LITKE, RICHARD HALLIDAY; KALAMAZOO METAL FINISHERS, INC., JOHN DOE, Defendants — Case No. 91-CV-74299 DT)

All defendants herein having filed motions for summary judgment which the court has heard argued, with Plaintiff Ortman's responses thereto, and the court

having studied the briefs, files and records in the case; now, therefore

IT IS ORDERED that summary judgment be and hereby is entered for Defendants herein, for the reasons briefed and argued.

IT IS FURTHER ORDERED, pursuant to Rule 11 of the Federal Rules of Civil Procedure, that each of the Defendants granted their motions for summary judgment this date be and hereby are awarded all attorney fees and costs incurred because of the necessity to file and argue said motions, to be paid by Plaintiff, who is an attorney and represented himself herein. All fees and costs incurred by each Defendant from date of filing of said motion are awarded, as there can be no question but that Plaintiff Ortman's pursuit of this matter after filing of these motions was without reasonable inquiry as to either relevant fact or law.

Petitions for fees and costs shall be filed and served on Plaintiff within 10 days of the date of this order, fully supported by time records and affidavits. If there is no objection to the reasonableness of those fees and costs from Plaintiff within 10 days thereafter, the court will enter its order awarding the amounts requested. If objections are filed, the court will hold hearing thereon prior to making its award.

IT IS SO ORDERED.

/s/ ANNA DIGGS TAYLOR
UNITED STATES DISTRICT JUDGE

Dated: April 13, 1992